

**ORIGINAL**

**OFFICIAL FILE**

**ILLINOIS COMMERCE COMMISSION STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY )

Petition for Approval of a Revised )  
Decommissioning Expense Adjustment )  
Rider. )

Docket No. 00-0361

CHIEF CLERK'S OFFICE

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**COMMONWEALTH EDISON COMPANY'S RESPONSE  
TO COOK COUNTY'S MOTION TO DISMISS  
OR CONSOLIDATE**

Commonwealth Edison Company ("ComEd"), by its attorneys, opposes Cook County's Motion to Dismiss or to Consolidate this proceeding with Dockets 99-0115 and 00-0191, and, in support of its opposition, states as follows:

1. This proceeding was filed to make and seek approval for a comprehensive proposal that will limit future decommissioning collections from ComEd's retail customers to \$120.9333 million per year for six years and transfer the risk of increases in decommissioning costs to a new generating company ("Genco"), resulting in savings to customers of \$1 billion. Under the proposal, at the end of the six years, ComEd customers will have no further responsibility for decommissioning costs.

2. Cook County has moved to dismiss this proceeding under Section 200.190 of the Commission's Rules of Practice. Section 200.190 provides that :

Motions may be presented requesting ... the  
dismissal of the proceeding for want  
of jurisdiction or want of prosecution....

Cook County's motion does not refer to either of these standards for dismissal. Instead, it states that ComEd "should not be allowed to proceed ... because [it] has provided no statutory basis for this petition." Motion ¶ 3. In addition, it refers to

Dockets 99-0115 and 00-0191 and asserts that ComEd "cannot file its Petition ... in addition to the pending petitions." Motion ¶ 3. Neither of these arguments provides any basis for dismissal of this proceeding.

3. Cook County's contention that ComEd has provided no statutory basis for this proceeding is incorrect. ComEd's petition cites 220 ILCS 5/9-201.5(d) and states that it authorizes recovery of decommissioning costs for a six-year period as proposed in the petition. Petition ¶ 7. The petition also cites 220 ILCS 5/16-114, which authorizes recovery of decommissioning costs when ComEd has "responsibility as a matter of contract or statute for decommissioning costs." Petition ¶ 5. Sections 16-114 and 9-201.5 both make reference to Section 9-201 under which the Commission approves the justness and reasonableness of changes in "proposed rates or other charges." 220 ILCS 5/9-201(b) and (c). Section 9-201.5(b) provides that changes in decommissioning charges shall not be subject "to the notice and filing requirements of subsection (a) of Section 9-201," but the remaining provisions of Section 9-201 apply and provide for the Commission to conduct hearings and approve changes in decommissioning rates. These provisions provide the statutory basis for this proceeding.

4. Far from meeting its burden under Section 200.190 of showing a "want of jurisdiction" to consider and approve ComEd's proposal, Cook County does not even discuss jurisdiction. The statutes identified by ComEd authorize the Commission to rule upon ComEd's proposal and Cook County does not contend otherwise. There is no want of jurisdiction.

5. Cook County's second argument that ComEd cannot file this proceeding in addition to Dockets 99-0115 and 00-0191 is also incorrect. Nothing that Cook County cites provides that ComEd may file only one proceeding per year dealing with the subject of decommissioning costs. Section 9-201.5(d) imposes no limit on the

number of proceedings that may be filed concerning decommissioning costs. To the contrary, it merely requires that there be a proceeding "not less than once every 6 years." 220 ILCS 5/9-201.5(d). Section 16-114 imposes no such limit. In fact, it specifically relies on "subsection (d) of Section 9-201.5," which establishes the minimum number of decommissioning proceedings, but sets no maximum.

6. ComEd's Rider 31 certainly presents no jurisdictional barrier to the Commission's consideration of the proposal presented in this proceeding. First, the provisions of Rider 31 dealing with proceedings concern a different subject than the proposal made in ComEd's petition in this case. Rider 31 proceedings are filed to compute "a Decommissioning Expense Adjustment pursuant to formulaes" set forth in Rider 31 to be applied to customers subject to the rider "during the Current Year." Rider 31 1<sup>st</sup> Revised Sheet No. 95.09.51. This proceeding is not filed to compute a decommissioning expense adjustment for a Current Year using the formulaes in Rider 31. Instead, as stated in the petition, ComEd's proposal involves "[a]n end to annual Rider 31 rate litigation." Petition ¶ 9. Therefore, the terms of Rider 31 do not address the subject of this proceeding, and could not possibly deprive the Commission of jurisdiction to consider it. Second, like Section 9-201.5(d), Rider 31 establishes a minimum number of Rider 31 computation proceedings that must occur. It sets no maximum limit. For that reason, even if Rider 31 dealt with the subject of this case, it would not support Cook County's motion. Nothing in Rider 31 prevents the filing of two proceedings dealing with decommissioning in one year. It only mandates that at least one Rider 31 computational proceeding be commenced every year.

7. The contention that only one proceeding concerning decommissioning may be filed each year is also inconsistent with Section 9-201.5(a), which uses plural terms, authorizing "the institution of rate provisions or tariffs." (emphasis supplied). Moreover, in addition to ordinary computational proceedings of the type specified by

Rider 31, Section 9-201.5 specifically authorizes the filing of special decommissioning proceedings "to reduce the amounts to be charged under [decommissioning ]tariffs in the future." 220 ILCS 5/9-201.5(a). The argument that ComEd is permitted to file only one annual decommissioning computational proceeding under Rider 31 conflicts with the statute's authorization of special proceedings for rates or tariffs to reduce amounts that would otherwise be charged under standard decommissioning tariffs in the future.

8. For all of these reasons, Cook County's motion to dismiss should be denied. Cook County does not cite or apply the applicable "want of jurisdiction" standard that governs the motion, and the arguments it advances provide no basis for concluding that the Commission lacks jurisdiction to hear this proceeding.

9. Cook County's alternative request that this proceeding be consolidated with Dockets 99-0115 and 00-0191 should also be denied. Cook County relies on Section 200.600 of the Commission's rules of practice, which provides that the Commission "may" order two or more proceedings consolidated if (1) they involve a similar question of law or fact, and (2) rights of the parties will not be prejudiced, and (3) rights of the public will not be prejudiced. Under these standards, consolidation of this proceeding with Dockets 99-0115 and 00-0191 is not appropriate.

10. First, the issues in this proceeding are dissimilar from the questions of fact or law that are involved in Dockets 99-0115 and 00-0191. Those dockets were filed to compute a decommissioning expense adjustment for a Current Year using the formulaes in Rider 31. Whatever collection amount the Commission sets in such a proceeding is subject to increase because customers remain liable for all reasonable costs and expenses of decommissioning. This proceeding presents the very different question whether the Commission should approve a proposal that will end Rider 31 litigation, limit future decommissioning collections to \$120.9333 million per year for

six years, protect ComEd's customers from the risk of future decommissioning cost increases and thereby produce savings of \$1 billion for customers.

11. Second, consolidation of the proceedings will prejudice the parties. The opportunity to achieve the savings arising from ComEd's proposal is time-sensitive because it is offered in connection with a larger transaction in which Genco will be formed. ComEd intends to close the Genco transaction promptly after the closing of its merger with PECO that is projected to close in or about September, 2000. Delaying a resolution of the issues in this proceeding by consolidating it with dissimilar issues presented by the annual Rider 31 computational proceedings will jeopardize the timely completion of an important aspect of the Genco transaction. Furthermore, the delay and complexity that consolidation would involve is completely unnecessary because, if ComEd's petition in this case is approved, there will be no need for a decision in Dockets 99-0115 and 00-0191. Both of those cases will be rendered moot because approval of ComEd's proposal will put an end to annual Rider 31 proceedings.

12. Third, consolidation of the proceedings will prejudice the rights of the public - ComEd's customers. Retail customers in ComEd's service territory, who are subject to unlimited risk of future decommissioning cost increases, are entitled to prompt consideration of the proposal to protect them from that risk and reduce decommissioning collections by \$1 billion. Joining this case with two annual Rider 31 computational dockets will result in a proceeding that has no clear focus and requires the parties and the hearing examiner to consider conflicting issues. The computational dockets focus on the amount of decommissioning collections that should be authorized for a particular year assuming that Rider 31 proceedings will continue year after year. In contrast, the proposal at issue in this proceeding is based on the termination of Rider 31 proceedings and establishing fixed

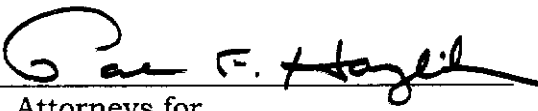
decommissioning collection levels for a limited period of time. Delaying this proceeding by mixing these dissimilar and conflicting issues will prejudice the public's right to an expeditious evaluation of the special opportunity offered by ComEd's proposal.

13. Finally, Cook County's citation of Sianis v. Kettler, 523 N.E. 2d 157, 168 Ill. App. 3d 1071 (1988), provides no support for its motion. Sianis dealt with the consolidation of a Forcible Entry and Detainer action for possession with an action for past-due rent. The statute specifically provided that "[a] claim for rent may be joined in the complaint" for possession of the property. 168 Ill. App. 3d at 1074. Unlike the dissimilar dockets Cook County seeks to join in this proceeding, the two claims in Sianis were completely consistent, were intended by statute to be decided in one case, and both had to be decided in order to grant complete relief. Here, the proceedings Cook County would join together present conflicting issues; there is no statute contemplating joinder; the separate dockets do not both have to be decided, and, in fact, a decision in this proceeding approving ComEd's proposal would eliminate any need to consider the issues in or to render a decision in Dockets 99-0115 and 00-0191.

WHEREFORE, ComEd requests that the Commission deny Cook County's motion to dismiss and deny Cook County's alternative motion to consolidate this case with Dockets 99-0115 and 00-0191.

Dated at Chicago, Illinois, this 9th day of June, 2000.

Respectfully submitted,

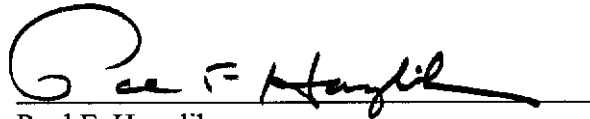
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**CERTIFICATE OF SERVICE**

I, Paul F. Hanzlik, do hereby certify that a copy of Commonwealth Edison Company's Response to Cook County's Motion to Dismiss or Consolidate was served upon all parties on the attached list by FedEx overnight mail on June 9, 2000.

  
Paul F. Hanzlik



**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

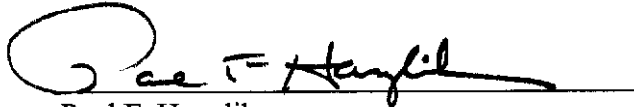
COMMONWEALTH EDISON COMPANY	:	
	:	
	:	No. 00-0361
Petition for Approval of a Revision to	:	
Decommissioning Expense Adjustment Rider to	:	
Take Effect on Transfer of ComEd's Generating	:	
Stations	:	

**NOTICE OF FILING**

TO: Attached List

PLEASE TAKE NOTICE that on this date we have filed with the Chief Clerk of the Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62701, Commonwealth Edison Company's Response to Cook County's Motion to Dismiss or Consolidate in the above entitled matter.

DATED: June 9, 2000

  
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